

**In the Supreme Court of the
Democratic Socialist Republic of Sri Lanka**

In the matter of an application made under and in terms of Article 121(1) read together with Article 120 of the Constitution of the Democratic Socialist Republic of Sri Lanka to determine whether the Bill titled the “Colombo Port City Economic Commission”, or any part thereof is inconsistent with the Constitution and/or requires to be passed with the special majority required by Article 84 or requires the approval of the People at a Referendum.

Rathnayake Mudiyansele Ranjith Madduma
Bandara
31/3, Kandawatta Terrace,
Nugegoda.

SC/SD/ Application No:

Petitioner

-Vs-

The Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondent

On this 15th day of April 2021

**TO: HIS LORDSHIPS THE CHIEF JUSTICE AND THEIR LORDSHIPS, THE
OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The Petition of the Petitioner above named appearing by _____ his registered Attorney-at-Law, states as follows:

The Petitioner

1. The Petitioner is a citizen of Sri Lanka and a member of Parliament representing the Samagi Jana Balawegaya Party. The Petitioner is also the General Secretary of the Samagi Jana Balawegaya Party.
2. The Respondent is the Hon. Attorney General, and is made a Respondent in terms of the requirements of Article 134(1) of the Constitution.
3. The Bill titled “Colombo Port City Economic Commission” (hereinafter referred to as “the Bill”) was published in the Gazette in the Democratic Socialist Republic of Sri Lanka on the 24th March 2021.

The said “Bill” was placed on the Order Paper of Parliament on the 8th of April 2021.

The petitioner annexes True Copies of the said “Bill” in the English, Sinhala and Tamil languages marked “P1”, “P2” and “P3” and pleads the same as part and parcel hereof.

Clause 3 (1) of “the Bill”

4. Clause 3 (1) of “the Bill” seeks to establish a Commission called the “Colombo Port City Economic Commission” (hereinafter referred to as the “Commission”) which shall be entrusted with the administration, regulation and control of, all matters connected with business and other operations, in and from the Area of Authority of the Colombo Port City, in the manner set out therein.
5. The Petitioner states that in terms of the provisions of “the Bill”, “all matters” referred to in Clause 3(1) include matters listed in the Provincial Council List in the 9th Schedule of the Constitution.
6. The Petitioner states that the Provisions in Article 154G(3) of the constitution have not been complied with after “the Bill” was published in the Gazette and before it was placed on the Order paper of Parliament.
7. The Petitioner states that in the circumstances, Clause 3 (1) of “the Bill” is inconsistent with Article 154G(3) of the Constitution.
8. The Petitioner also states that in terms of the provisions of “the Bill”, “all matters” referred to in the said Clause 3(1), include Public Finance and the imposition of taxes, rates and other levies. Therefore, the Petitioner states that said Clause 3 (1) of “the Bill” is inconsistent with Article 148 of the Constitution.

9. Therefore, the Petitioner states that Clause 3 (1) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution

Clause 6(1) (a) and (b) of “the Bill”

10. The Petitioner states that Clauses 6(1) (a) and (b) of “the Bill” empower the Commission to issue and grant a registration, licence, authorisation and other approval to engage in business, in and from the Area of Authority of the Colombo Port City to facilitate businesses and investments, and to facilitate and exercise overall regulatory supervision and control over all investments and businesses in and from the Area of Authority of the Colombo Port City, with the concurrence of the relevant regulatory Authority.
11. In terms of the provisions of “the Bill”, “registration, licence, authorisation and other approval to engage in business” referred to in Clause 6(1) (a) of “the Bill” and “overall regulatory supervision and control over all investments and businesses” in Clause 6(1) (b) of “the Bill” include matters set out in the Provincial Council List in the Ninth Schedule of the Constitution.
12. The Petitioner states that the Provisions in Article 154G(3) of the constitution have not been complied with after “the Bill” was published in the Gazette and before it was placed on the Order paper of Parliament.
13. The Petitioner states that in the circumstances, Clause 6(1) (a) and (b) of “the Bill” are inconsistent with Article 154G(3) of the Constitution.
14. Therefore, the Petitioner states that Clauses 6 (1) (a) and (b) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament as required by Article 84 (2) of the Constitution.

Clause 6 (1) (p) of “the Bill”

15. Clause 6 (1) (p) of “the Bill” empowers the Commission to prescribe local assessment rates and other levies.
16. The Petitioner states that this is a subject vested with the Provincial Council in terms of the Provincial Council List of the Constitution.

17. The Petitioner states that the Provisions in Article 154G(3) of the constitution have not been complied with after “the Bill” was published in the Gazette and before it was placed on the Order paper of Parliament.
18. The Petitioner states that in the circumstances, Clause 6(1) (p) of “the Bill” are inconsistent with Article 154G(3) of the Constitution.
19. Therefore, the Petitioner states that Clause 6 (1) (p) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament as required by Article 84 (2) of the Constitution.

Clause 6 (1) (ga) of “the Bill”

20. Clause 6 (1) (ga) of “the Bill” empowers the Commission to regulate gaming activities within the area of Colombo Port City, which is a power vested with the Western Provincial Council in terms of the provisions of the Constitution.
21. The Petitioner states that the Provisions in Article 154G(3) of the constitution have not been complied with after “the Bill” was published in the Gazette and before it was placed on the Order paper of Parliament.
22. The Petitioner states that in the circumstances, Clause 6(1) (ga) of “the Bill” are inconsistent with Article 154G(3) of the Constitution.
23. Therefore, the Petitioner states that Clause 6 (1) (ga) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament as required by Article 84 (2) of the Constitution.

Clause 7 (1) of “the Bill”

24. Clause 7(1) of the Bill empowers the President to appoint even non-citizens of Sri Lanka as members of the Commission.
25. The Petitioner states that the Commission consisting of such members is entrusted with the administration, regulation and control of all matters connected with businesses, and other operations in and from, the area of Authority of Colombo Port City.

26. The Petitioner states that in other words, Clause 7(1) of “the Bill” enables an arbitrary appointment of a body comprising solely of foreigners to administer, regulate and control all matters connected with businesses and other operations within a part of the territory of Sri Lanka.
27. The Petitioner states that Clause 7(1) of “the Bill” is inconsistent with the “Doctrine of Public Trust” and directly affects the sovereignty of the People including the Petitioner, and thus, Clause 7(1) is inconsistent with Article 3 and Article 4 of the Constitution.
28. Therefore, the Petitioner states that Clause 7(1) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution

Clause 15(1), 16(2) and 23(4) of “the Bill”

29. The Petitioner states that Clause 15(1) read together with Clause 16(2) of “the Bill” requires the accounts of the Commission to be audited by an International Firm of Accountants and Clause 23(4) of “the Bill” grants power to appoint an International Firm of Accountants to audit the Fund of the Commission.
30. The Petitioner states that Clause 15(1), 16(2) and 23(4) are inconsistent with Article 154(1) and 154(2) of the Constitution.
31. Therefore, the Petitioner states that Clause 15(1), 16(2) and 23(4) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament.

Clause 26(1) of “the Bill”

32. The Petitioner states that Clause 26(1) of “the Bill” stipulates that a person other than an authorized person in terms of the provisions of the Bill shall not be permitted to engage in business in and from the area of Authority of the Colombo Port City.
33. The Petitioner pleads that the aforesaid Clause is inconsistent with Article 12(1) and/or Article 14(1)(g) of the Constitution.
34. Therefore, the Petitioner states that Clause 26(1) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole

number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution

Clause 27(3) and (4) of “the Bill”

35. The Petitioner states that Clause 27(3) of “the Bill” requires investments into the Port City to be made in any other designated foreign currency other than Sri Lanka Rupees.
36. The Petitioner states that Clause 27(4) of “the Bill” stipulates that no foreign currency deposit in an account maintained or operated in Sri Lanka, in any licensed commercial bank or licensed specialised bank within the meaning of the Banking Act shall be used by an authorised person for the purpose of any investment, within the Area of Authority of the Colombo Port City, and all investments made to carry on business in and from the Area of Authority of the Colombo Port City shall be raised outside Sri Lanka.
37. The Petitioner states that Clause 27(4) of “the Bill” prevents citizens of Sri Lanka who have foreign currency deposits in an account maintained or operated in Sri Lanka or who have the capacity and capability to invest in Sri Lankan Rupees, from making any investment in the Colombo Port City.
38. The Petitioner pleads that Clause 27(3) and (4) are inconsistent with Article 12(1) and/or Article 14(1)(g) of the Constitution.
39. Therefore, the Petitioner states that Clause 27(3) and (4) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution.

Clause 40(2) of “the Bill”

40. The Petitioner states that Clause 40(2) of “the Bill” empowers the Commission to prescribe any levy as maybe required to be paid by a citizen of Sri Lanka or a resident on goods purchased at retail facilities as set out in subsection (1), when leaving the Area of Authority of Colombo Port City.
41. The Petitioner pleads that Clause 40(2) is inconsistent with Article 12(1) and Article 148 of the Constitution.
42. Therefore, the Petitioner states that Clause 40(2) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution.

Clause 63(1) and/or (2) of “the Bill”

43. The Petitioner states that Clause 63(1) of “the Bill” sets out that the Courts should give priority to legal proceedings instituted on civil and commercial matters, where the cause of action has arisen within the Area of Authority of the Colombo Port City or in relation to any business carried on in or from the Area of Authority of the Colombo Port City.
44. The Petitioner states that Clause 63(1) is inconsistent with Article 12(1) of the Constitution.
45. The Petitioner states that Clause 63(2) of “the Bill” stipulates that the inability of a particular Attorney-at-law to appear before the Court on a particular date for personal reasons shall not be a ground for postponement of commencement or continuation of the trial of cases stipulated in Clause 63(1), which is also inconsistent with Article 12(1) of the Constitution.
46. Therefore, the Petitioner states that Clause 63(1) and/or 63(2) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution.

Clause 64(1) of “the Bill”

47. The Petitioner states that Clause 64(1) of “the Bill” stipulates that the Commission may, where it considers necessary to do so, as an interim measure, permit an authorised person to engage in business from a designated location in Sri Lanka, outside the Area of Authority of the Colombo Port City, as may be approved by the President or in the event that the subject of the Colombo Port City is assigned to a Minister, such Minister, for a period not exceeding five years from the date of commencement of this Act. It also stipulates that such business shall, for such period of five years be entitled to all the privileges accorded to, and be deemed for all purposes to be, a business situated within and engaged in business, in and from, the Area of Authority of the Colombo Port City.
48. The Petitioner states that Clause 64(1) of “the Bill” allows an authorized person to engage in business outside the Colombo Port City, with privileges, which are not extended to other citizens engaged in the same business outside the area of the Colombo Port City.

- 49. Therefore, the Petitioner pleads that Clause 64(1) of “the Bill” is inconsistent with Article 12(1) of the Constitution.
- 50. Therefore, the Petitioner states that Clause 64(1) of “the Bill” cannot be enacted into law save and except approved with a 2/3rd vote of the whole number of members of Parliament and approved by the People at a Referendum as required by Article 85 (1) of the Constitution.
- 51. The Petitioner pleads that the Petitioner has not previously invoked the jurisdiction of Your Lordship’s Court with respect to this matter.
- 52. The Petitioner respectfully reserves the right to furnish additional pleadings and/or documents in support of the Petitioner’s application should it become necessary.

WHEREFORE, the Petitioner respectfully prays to Your Lordship’s Court for

- (a) a declaration that the Bill should have been referred to all Provincial Councils for the expression of their views under Article 154G(3) of the Constitution, and that the Bill has not been so referred before it was placed on the Order Paper of Parliament, and consequently cannot be proceeded with in Parliament;
- (b) A determination that the provisions of Clauses 3(1) and/or Clause 6(1)(a) and/or Clause 6(1)(b) and/or Clause 6(1)(p) and/or Clause 6(1)(ga) and/or Clause 7(1) and/or Clause 15(1) and/or Clause 16(2) and/or Clause 23(4) and/or Clause 26(1) and/or Clause 27(3) and/or Clause 27(4) and/or Clause 40(2) and/or Clause 63(1) and/or Clause 63(2) and/or Clause 64(1) and/or any one or more of them of “the Bill” titled “Colombo Port City Economic Commission” is and/or are inconsistent and/or contrary with Article 3 and/or Article 3 read together with Article 4 and/or inconsistent and/or contrary to Articles 12(1) and/or 14(1)(g) and/or Article 84(2) and/or Article 148 and/or Article 154G(3) of the Constitution, and thus cannot be enacted in to law save and except unless approved with a 2/3rd majority vote of the whole number of members of Parliament in favour and approved by the People at a Referendum as required by Article 85 (1) of the Constitution.
- (c) Grant such and other further relief as Your Lordships’ Court deems meet.

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Attorney-at-Law for the Petitioner